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9
10 UNITED STATES BANKRUPTCY COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 (Oakland Division)
13

14 In Re:) Chapter 11
) Case No.: 4:24-bk-40726
15 William and Julie Romanowski,)
16 Debtors) DEBTORS-IN-POSSESSION'S
) OPPOSITION TO UNITED STATES'
) MOTION FOR RELIEF FROM STAY
17 Debtor)
) Hearing Date: July 26, 2024, at 10:00 am
) Place: Courtroom 215, 1300 Clay Street,
) Suite 300, Oakland, CA 94612
)
) Judge: Judge Charles Novack
)

18 Debtors and Debtors-in-Possession William and Julie Romanowski (together "Debtors")
19 submit the following in opposition to the United States' Motion on behalf of the Internal
20 Revenue Service ("IRS") for Relief From Stay ("Motion").

21 **PRELIMINARY STATEMENT**

22 The IRS seeks relief from the stay to pursue its claim in the District Court, where no
23 substantive proceedings have yet taken place. However, the underlying issue in the case against
24 Debtors is the existence, nature, and extent of their debt, if any, to the IRS and the allowance or
25 disallowance of such claim against Debtors' estate. Indeed, to that end, the IRS filed a proof of
claim in this case on May 28, 2024 in a secured amount of \$13,956,352.89 and an unsecured

1 amount of \$113,632.65. Further related to its claim, the IRS has collected payments from
2 Debtors that they will seek to recover as preferential or fraudulent transfers under 11 U.S.C.
3 §§547(b) or 11 U.S.C § 548(a).

4 Each of those issues are squarely core proceedings under the Bankruptcy Code. *See* 28
5 U.S.C. §157(b)(1), (b)(2)(A), (B), (E), (F), (H), & (K).

6 The IRS' Motion must be denied.

7 **STATEMENT OF FACTS**

8 **The IRS Claim**

9
10 The IRS asserts that Debtors owe taxes arising from unpaid tax debt dating back several
11 years, identified by the IRS as tax years 1998-2004 and 2007. *Motion*, p. 2, l. 21-24; Duffy
12 Declaration, Ex. 6 ¶¶30, 33. In connection with that claim, the IRS asserts that it has an ongoing
13 lien against Debtors' property, making it a secured creditor.

14 Debtors dispute the IRS' claims.

15 In connection with its claim, the IRS has taken unjustified, unauthorized, and preferential
16 collection efforts against Debtors. Therefore, in addition to disputing the claim, Debtors will
17 seek to recover all payments received by the IRS after July 28, 2023.

18 Unrelated to this case, the IRS asserts the right to collect that claim from an entity
19 founded by Debtors, Nutrition 53, Inc. ("N53") on an alter ego theory, which is a debtor in a
20 separate case before this Court (*In re Nutrition 53*, USDC ND Cal. Case No. 4:23-bk-40997).
21 Those claims against N53 have no bearing on and are unrelated to this matter.

22 **Debtors' Objections to Those Claims**

23 **Debtors assert that the Tax Assessment Against them has Expired Except as** 24 **to a \$140,000 Tax Debt**

25 The Collection Statute Expiration Date ("CSED") as to Debtors was July 28, 2023 for all

1 but approximately \$140,000 of their tax debt. That expired debt may not be collected from
2 Debtors. Therefore, there is an issue as to the validity of the IRS' claim and as to the actual
3 amount of that claim. That is a core proceeding within the jurisdiction of the Bankruptcy Court.
4 *See* 28 U.S.C. §157(b)(2)(B).

5 **Debtors Assert that the Debt Subject to the IRS Lien is not Greater than**
6 **\$140,000**

7 The Collection Statute Expiration Date ("CSED") as to Debtors was July 28, 2023 for all
8 but approximately \$140,000 of their tax debt. Therefore, the lien, to the extent the IRS has a
9 valid lien at all, is limited to the remaining asserted tax debt of \$140,000. Therefore, there is an
10 issue as to the validity and extent of the IRS' lien. That is a core proceeding within the
11 jurisdiction of the Bankruptcy Court. *See* 28 U.S.C. §157(b)(2)(K)

12 **Debtors assert that there are no Assets Against Which to Assert a Lien, Rendering**
13 **the Claim Unsecured**

14 Even if there is a valid claim in an undetermined amount, Debtors aver that they have no
15 assets against which to assert such a lien. Therefore, there is an issue as to the extent of the IRS'
16 lien. That is a core proceeding within the jurisdiction of the Bankruptcy Court. *See* 28 U.S.C.
17 §157(b)(2)(K); see also 11 U.S.C. §506(a), 11 U.S.C. §1322(b)(2), *In re Lam* 211 B.R. 36, 38
18 (9th Cir. BAP 1997).

19 **Debtors assert that the IRS Received Preferential or Fraudulent, or both, Payment**
20 **from Debtors**

21 Even if there is a valid claim in an undetermined amount, to the extent the IRS collected
22 more than that amount within the year of this bankruptcy filing, those collections are avoidable
23 under 11 U.S.C. §§547(b) or 11 U.S.C § 548(a), or both. That is a core proceeding within the
24 jurisdiction of the Bankruptcy Court. (*See* 28 U.S.C. §157(b)(2)(F) & (H).)
25

LEGAL ARGUMENT

“Bankruptcy court jurisdiction derives from 28 U.S.C. §§ 1334 and 157. *Kim v. Young Jin Yoon* (*In re Young Jin Yoon*), 627 B.R. 905, 915 (Bankr. C.D. Cal. 2021).

"Core" proceedings are matters "arising under" and "arising in" cases under title 11. *In re Wood*, 825 F.2d 90, 96 (5th Cir. 1987). Matters "arise under" title 11 if they involve a cause of action created or determined by a statutory provision of title 11. (*Id.*) Bankruptcy judges may hear and determine core proceedings and enter final orders and judgments. 28 U.S.C. § 157(b)(1). *Kim v. Young Jin Yoon* (*In re Young Jin Yoon*), 627 B.R. 905, 915 (Bankr. C.D. Cal. 2021).

The IRS filed its proof of claim against Debtors for a past due tax debt on May 28, 2024 asserted its claims against Debtors. That is the sum and substance of the IRS claim.

Courts have long recognized that the filing of a proof of claim "invokes the special rules of bankruptcy," and that "a claim filed against the estate is a core proceeding because it could arise only in the context of bankruptcy." *Wood v. Wood*, 825 F.2d 90, 97 (5th Cir. 1987).

All that exists here is an issue surrounding the nature, kind, and extent of the IRS' claim against Debtor. That is a core proceeding in this bankruptcy and shall be adjudicated in due course. *11 U.S.C. §1334*. Allowance or disallowance of claims against the estate is a core proceeding. *See U.S. Abatement Corp. v. Mobil Exploration & Producing U.S., Inc.* (*In re U.S. Abatement Corp.*), 79 F.3d 393 (5th Cir. 1996) (dispute over amount of creditor's claim is core proceeding); *In re Trident Shipworks, Inc.*, 247 B.R. 513 (Bankr. M.D. Fla. 2000) (claim estimation proceeding).

1 Therefore, all that exists here is an issue surrounding the nature, kind, and extent of the
2 IRS' claim against Debtor. That is a core proceeding in this bankruptcy and should be
3 adjudicated *by this Court* in due course. (11 U.S.C. §502(a).)

4 Allowance or disallowance of claims against the estate is a core proceeding. *See U.S.*
5 *Abatement Corp. v. Mobil Exploration & Producing U.S., Inc.* (In re U.S. Abatement Corp.), 79
6 F.3d 393 (5th Cir. 1996) (dispute over amount of creditor's claim is core proceeding); *In re*
7 *Trident Shipworks, Inc.*, 247 B.R. 513 (Bankr. M.D. Fla. 2000) (claim estimation proceeding).

8 Further, 11 U.S.C. Section 502(a) makes clear that determination of the validity and
9 extent of a claim or the security related to that claim is a core proceeding.
10

11 (a) A claim or interest, proof of which is filed under section 501 of this title, is deemed
12 allowed, unless a party in interest . . . objects. (b) . . . if such objection to a claim is
13 made, the court, after notice and a hearing, shall determine the amount of such claim in
14 lawful currency of the United States as of the date of the filing of the petition, and shall
15 allow such claim in such amount, except to the extent that - (1) such claim is
16 unenforceable against Debtors and property of Debtors . . . (3) if such claim is for a tax
17 assessed against property of the estate, such claim exceeds the value of the interest of
18 the estate in such property . . .

19 11 U.S.C. § 502

20 **Under 11 U.S.C §544(a), the IRS Lien is not Enforceable Against Debtor**

21 The IRS lien is not enforceable against Debtor and may be avoided under 11 U.S.C. §544
22 and 26 U.S.C §6323(a), (h)(6). Debtors-in-possession stands “in the same idealized shoes as the
23 trustee, and his status as hypothetical lien creditor remains unaffected by any alleged wrongful
24 acts of Debtors.” *In re Wiggs*, 87 B.R. 57, 58 (Bankr. S.D. Ill. 1988); *In re International Gold*
25 *Bullion Exchange, Inc.*, 53 B.R. 660 (Bankr. S.D. Fla. 1985).

26 The validity of federal tax liens is governed by the Internal Revenue Code. *See 26 U.S.C.*
27 *§ 6323; United States v. Z Inv. Props., LLC*, 921 F.3d 696, 700 (7th Cir. 2019). “In instances

1 where a *bona fide* purchaser acquires an encumbered property without notice of the attached lien,
2 the lien does not follow the title. 26 U.S.C. § 6323(a); *Id.* at 700.

3 In general, the transfer of property subsequent to the attachment of the lien does not
4 affect the lien, but an exception to this rule prevents enforcement of a lien against a "purchaser,"
5 defined as "a person who, for adequate and full consideration in money or money's worth,
6 acquires an interest" in the relevant property without notice. 26 U.S.C. §§ 6323(a), (h)(6); *see*
7 *also United States v. Z Inv. Props., LLC*, No. 17-cv-4405, at *11 (N.D. Ill. Apr. 2, 2018)

8 Debtors stands in the possession of that "purchaser" under §544. 11 U.S.C §1107(a).

9 The IRS' errant lien is not enforceable against Debtors.

10
11 **The IRS' Tax Assessment Against the Taxpayer has Expired – The IRS has**
12 **no Standing to Assert its Motion**

13 The IRS assessment against Debtors expired on July 28, 2023. That expiration is
14 utterly unaffected by the IRS lawsuit filed on June 20, 2023. That filing does not extend the
15 assessment period or the related collection period.

16 The IRS asserts a lien under 26 U.S.C. 6321 & 6322. No lien exists. Such lien
17 arises only upon a taxpayers' refuses or neglects to pay his or her taxes. 26 U.S.C. 6321.
18 Debtors have an all times been ready, willing, and able to pay their taxes and at all times were
19 operating under a payment plan to do so. While the IRS may have stopped collecting those
20 payments, Debtors have never refused to make those payments. There is a payment plan in
21 place, whether the ITS acts on its provisions or not. As §6321 only arising upon taxpayer refusal
22 or neglect, it is inapplicable to this case.

23 Further, even if such a lien existed, 26 U.S.C. §§6322, 6325(a)(1), and 6502(a)
24 provide that a lien must be released when it becomes legally unenforceable. Under IRM
25 5.12.3.3.2(1), "The term "unenforceable" means unenforceable as a matter of law and not merely

1 uncollectible. Most commonly, "unenforceable" pertains to the passing of the Collection Statute
2 Expiration Date (CSED)." The CSED was July 28, 2023.

3 Section 6502(a) provides that a timely collection proceeding will extend "the period
4 during which such tax may be collected" until the tax "is satisfied or becomes
5 unenforceable." . . . §6502 explicitly provides that, even if the Government tolls a lien
6 by commencing a collection action, that lien will still expire when "the liability for the
7 tax ... becomes unenforceable," 26 U.S.C. § 6502(a).

8 *United States v. Norwood*, 49 F.4th 189, 212-13 (3d Cir. 2022). That lien "becomes
9 unenforceable" when the assessment period expires. *Id.*; 26 U.S.C. §§6322, 6325(a)(1), and
10 6502(a); *IRM 5.12.3.3.2.(1)*.

11 **Based on the Foregoing, the IRS Collections are Avoidable Transfers**

12 Preferential or fraudulent transfers may be recovered under 11 U.S.C. §§547(b) or 11
13 U.S.C § 548(a). If Debtors demonstrate that the IRS claim is invalid, unsecured, or otherwise
14 not as claimed, the transfers to the IRS are or may be avoidable. Those causes of action are core
15 proceedings. *See* 28 U.S.C. §157(b)(2)(F) & (H).

16 **CONCLUSION**

17 For the foregoing reasons, the IRS' Motion must be denied. It has no standing to bring
18 its Motion. At best, it has an unproven, unadjudicated, unliquidated, disputed claim that must be
19 adjudicated before this Court as a Core Proceeding. It has no right to a dismissal, a trustee, or
20 relief from the automatic stay.

21 

22
23 Dated: July 19, 2024

24 By: _____
25 Miles Archer Woodlief
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PROOF OF SERVICE

I, Miles Archer Woodlief, certify and declare as follows:

I am over the age of 18 years, and not a party to this action. I maintain an office at 775 East Blithedale Avenue, Suite 514, Mill Valley, CA 94941, which is located in the county where the mailing described below took place.

I hereby certify that on July 19, 2024, I electronically filed Debtors' Opposition to the United States' Motion for Relief from Stay, with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all parties entitled to it.

I further certify that on July 19, 2024, I caused to be sent by regular, U.S. mail copies of the documents described above to those listed on the attached creditor matrix.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on July 19, 2024.



Miles Archer Woodlief

Label Matrix for local noticing
0971-4
Case 24-40726
California Northern Bankruptcy Court
Oakland
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